

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

**LEAF FUNDING, INC.,**

Plaintiff,

v.

**BLUEBIRD AMUSEMENT, INC.  
and BRIAN WHITE**

Defendants.

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No.

FILED: April 9, 2008  
08cv2008 J. N.  
JUDGE GOTTSCHALL  
MAG. JUDGE KEYS

**COMPLAINT**

Plaintiff, LEAF Funding, Inc., for its Complaint against Defendants, Bluebird Amusement, Inc. ("Bluebird") and Brian White ("White"), states as follows:

**JURISDICTION AND PARTIES**

1. Plaintiff, LEAF Funding Inc. ("LEAF"), is a Delaware corporation with its principal place of business in Wilmington, Delaware and is fully authorized to do business in the State of Illinois.

2. Defendant Bluebird is an Illinois corporation with its principal place of business at 1632 S. Greenwood, Park Ridge, Illinois.

3. Defendant White, is a citizen of Illinois who resides at 1632 S. Greenwood, Park Ridge, Illinois.

4. This court has jurisdiction pursuant to 28 U.S.C. §1332. Venue is proper pursuant to 28 U.S.C. §1391(a).

**BACKGROUND FACTS**

5. On or about February 9, 2007, LEAF, as Lessor, and Bluebird, as Lessee, executed a Lease Agreement (the "Lease Agreement") with respect to certain equipment

described within that agreement (the "Equipment"). (A copy of the Lease Agreement is attached as "Exhibit A.")

6. Under the Lease Agreement, Bluebird agreed to make 36 monthly payments of \$2,562.71.

7. Under the Lease Agreement, upon default, Bluebird agreed to pay all past due and all remaining payments due, plus interest, to pay the reasonable attorney fees and actual costs including repossession and collection costs.

8. To secure payment of the indebtedness under the Lease Agreement, on or about February 9, 2007, White executed a Personal Guaranty, as a part of the Lease Agreement under which he absolutely and unconditionally agreed to repay all monies owed by Bluebird to LEAF (the "Personal Guaranty"). See Lease Agreement.

9. The Equipment was delivered to Bluebird on or about February 8, 2007. (A copy of the Delivery and Acceptance Certificate is attached as "Exhibit B.")

**COUNT I**  
**BREACH OF THE LEASE AGREEMENT**

10. LEAF incorporates the allegations of ¶¶1 through 9, inclusive, as if fully rewritten into this paragraph.

11. Bluebird failed to make payments under the Lease Agreement when due and as required.

12. Bluebird is in default under the Lease Agreement.

13. As a result, under the Lease Agreement, Bluebird owes LEAF the sum of \$79,444.01, plus interest, reasonable collection costs, and attorney's fees.

14. LEAF has performed all terms and conditions required of it to be performed under the Lease Agreement.

**COUNT II**  
**LIABILITY OF GUARANTOR**

15. LEAF incorporates the allegations of ¶¶1 through 14, inclusive, as if fully rewritten into this paragraph.

16. As a result of Bluebird's default, under the Personal Guaranty, White presently owes LEAF the sum of \$79,444.01, plus interest, reasonable collection costs, and attorney's fees.

17. LEAF has performed all terms and conditions required of it to be performed under the Lease Agreement.

**COUNT III**  
**REPOSSESSION OF THE EQUIPMENT**

18. LEAF incorporates the allegations of ¶¶1 through 17, inclusive, as if fully rewritten into this paragraph.

19. Pursuant to the terms and provisions of the Lease Agreement, upon default by Bluebird, LEAF is entitled to immediate possession of the Equipment.

20. LEAF has demanded return of the Equipment.

21. Bluebird has failed and refused to return the Equipment and is wrongfully retaining possession of the Equipment.

22. The Equipment has not been taken for tax assessment or fine pursuant to statute or seized under an execution of judgment.

**COUNT IV**  
**CONVERSION OF THE EQUIPMENT**

23. LEAF incorporates the allegations of ¶¶1 through 22, inclusive, as if fully rewritten into this paragraph.

24. Bluebird is in possession of the Equipment.

25. LEAF has demanded return of the Equipment.

26. Bluebird has failed to and refused to return the Equipment and is wrongfully retaining possession of the Equipment.

27. By refusing to return the Equipment, Bluebird has converted the Equipment.

WHEREFORE, Plaintiff, LEAF Funding, Inc., demands judgment as follows:

- (1) On its First Claim for Relief against Defendant Bluebird Amusements, Inc. for \$79,444.01, plus interest, reasonable collection costs, and attorney's fees;
- (2) On its Second Claim for Relief against Defendant Brian White for \$79,444.01, plus interest, reasonable collection costs, and attorney's fees;
- (3) On its Third Claim for Relief against Defendant Bluebird Amusements, Inc. for possession of the Equipment;
- (4) On its Fourth Claim for Relief against Defendant Bluebird Amusements, Inc. for compensatory and punitive damages, and attorney's fees;
- (5) For its Court costs; and
- (6) For such further and other relief to which it may be entitled.

Respectfully submitted,

Michael H. McColl  
Michael H. McColl  
FORAN GLENNON PALANDECH &  
PONZI PC  
ARDC #6225588  
150 South Wacker Drive  
Suite 1100  
Chicago, IL 60606  
(312)863-5000

Attorney for Plaintiff, LEAF Funding, Inc.

JUDGE GOTTSCHALL  
MAG. JUDGE KEYS



## LEASE AGREEMENT

Phone: 800-819-5556, Fax: 215-569-0675

1818 Market Street, 9<sup>th</sup> Floor, Philadelphia, PA 19103

LESSOR INFORMATION				
Lessor Legal Name <b>Bluebird Amusement, Inc.</b>		Address <b>1632 S. Greenwood</b>		
City <b>Park Ridge</b>	County <b>Cook</b>	State <b>IL</b>	Zip <b>60068</b>	Phone <b>(773)-531-3085</b>
EQUIPMENT DESCRIPTION				
Unit Quantity	Description of Equipment Leased NEW (X) USED ( )	Make and Type	Model Number	Serial Number
	See Schedule A			
Equipment Location: Same (X) Other ( )		Address		City State Zip
TERM AND PAYMENT SCHEDULE				
Term in Months <b>36</b>	Lease Payments: (X) Monthly ( ) Quarterly ( ) Other <b>\$2,562.71</b> (Plus applicable taxes)	(a) Total Advance Lease Payment: <u>1</u> Months = <b>\$2,562.71;--</b> (b) A Security Deposit in the amount of: \$ _____ (c) A Documentation Fee in the amount of: <b>\$125.00.</b>		
AT THE EXPIRATION OF THIS LEASE, _____ FAIR MARKET VALUE PURCHASE OPTION IF YOU ARE NOT IN DEFAULT, YOU WILL _____ 10% PURCHASE OPTION HAVE THE FOLLOWING PURCHASE OPTION: X \$1.00 PURCHASE End of lease purchase option shall be FMV unless another option is selected		Please provide payment in the amount of (a)+(b)+(c) <b>\$2,687.71</b> when you execute and return this lease. "If more than one month's lease payment is required as an Advance Lease Payment, the additional amount will be applied on the lease commencement date to lease payments in inverse order, starting with the last lease payment. If you are tax exempt please attach certificate and write your tax-exempt #		
LEASE AGREEMENT				

Throughout this agreement the words "We," "Our," and "Us" refer to the Lessor, LEAF Funding, Inc. The words "You" and "Your" refer to the Lessee indicated above. You agree to lease the Equipment described above ("Equipment") and agree to the terms and conditions of this Lease Agreement ("Lease").

**LEASE PAYMENTS:** In accordance with the Lease payment schedule outlined herein, you agree to pay us the Lease payments. We may adjust your lease payment upward or downward by no more than 15% if the invoiced costs are different than the amount we used to calculate the estimated Lease payments shown above. Your obligation to pay the Lease payments and all other obligations herein are absolute and unconditional and are not subject to any abatement, set-off, defense or counterclaim for any reason whatsoever. If the Lease Commencement Date is other than the date we execute the Lease, you agree to pay us an interim rent Lease Payment. This interim Lease Payment will be included as part of the first invoice sent by us to you. The remaining Lease Payments, beginning with the first Lease Payment, will be due on the first day of the subsequent month (or such other time period specified above) designated by us.

**DELIVERY, INSTALLATION AND ACCEPTANCE:** You are responsible for arranging the delivery of the Equipment described above. The Lease term will commence when the Equipment is delivered and installed. Unless you notify us otherwise in writing within 10 days of installation, you unconditionally accept the Equipment. We may require you to provide us a signed delivery and acceptance certificate.

**EQUIPMENT LOCATION USE AND REPAIR:** You will maintain and use the Equipment only at the location shown above. You agree that the Equipment cannot be moved from that location without our advance written approval. You are responsible for maintaining the Equipment in good repair, condition, and in proper working order, except for normal wear and tear. You are responsible for protecting the Equipment from damage or any kind of loss whatsoever and will continue to make Lease payments if any damage or loss occurs, even if the Equipment is completely destroyed.

**INDEMNIFICATION:** We are not responsible for any losses or damages caused by the installation or use of the Equipment, or from any other kind of loss while you are in possession of the Equipment. You agree to indemnify and hold us harmless from

any and all losses, claims, liabilities, demands and expenses whatsoever that may arise from your use of the Equipment.

**LEASE EXPIRATION AND RENEWAL:** Unless you notify us in writing at least 90 days prior to the expiration of the Lease, or any renewal term, of your intention to return the Equipment to us or to exercise the purchase option indicated above, this Lease will automatically renew for successive 90 day periods at the same monthly Lease payment amount until you either exercise the purchase option or provide us with notice of your intention to return the Equipment to us. If you exercise a fair market value purchase option, you agree to purchase all, but not less than all, of the Equipment that is in place and in use at your location for its fair market value. If you elect to return the Equipment to us, it must be returned to the location that we designate within 90 days of your notice to us of your intention to return the Equipment to us. Your obligation to pay rent will continue until the Equipment is returned to our designated return location. You are responsible for all expenses incurred in returning the Equipment to us and agree to pay us a Restocking Fee equal to one additional Lease payment.

**LATE FEES AND COLLECTION CHARGES:** If any Lease payment or other amount payable to us is not paid within ten (10) days of its due date, you agree to pay us a late charge of the greater of 10% of the amount which is late or \$10.00, or if less, the maximum amount allowable under applicable law. You also agree to pay us thirty-five dollars (\$35.00) for each check returned for insufficient funds.

**NO WARRANTY:** The Equipment is being leased to you "as is". You acknowledge that we do not manufacture the Equipment and that you have selected the Equipment and the supplier based on your own judgment. **WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE EQUIPMENT THAT IS THE SUBJECT OF THIS AGREEMENT. WE SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES. WE SHALL NOT BE LIABLE FOR ANY LOSS OR INJURY TO YOU OR TO ANY THIRD PERSON OR PROPERTY, INCLUDING DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL AND SPECIAL DAMAGES CAUSED BY THE USE, OWNERSHIP, LEASE OR POSSESSION OF THE EQUIPMENT.** You agree to continue making Lease payments to us under this Lease, regardless of

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any claims you may have against the manufacturer or supplier. We transfer to you for the term of this Lease any warranties made by the manufacturer or the supplier. No representation or warranty by the manufacturer or supplier is binding on us nor shall breach of such warranty relieve you of your obligation to us as provided herein.

**INSURANCE:** During the term of this Lease, you will procure and maintain at your expense, property insurance for the full replacement value of the Equipment, and public liability insurance in an amount acceptable to us, covering any personal injury, death or third-party property damage arising out of or relating to the use or operation of the Equipment. You will provide us evidence of such insurance when requested, naming us as loss payee and as an additional insured. If you do not provide us with such evidence, we may at our option either purchase such insurance for the Equipment or add such insurance costs to the amounts due from you under this Lease or charge you a monthly administrative fee of \$8.75 per month for our costs in identifying, monitoring and otherwise administering such deficiency. We reserve the right to increase such monthly charge in the event that our costs for providing such services increase. If we purchase such insurance on your behalf, it shall not relieve you of any obligations, which you may have under this Lease or release you from any claims we may have against you.

**OWNERSHIP, TAXES AND UCC's:** We are the owner of the Equipment and hold title in fee to the Equipment. You will pay, when due, all taxes, fines and penalties relating to your use or our ownership of the Equipment under this Lease. Your Lease payments shown above do not include any applicable taxes. We will include any applicable taxes and fees, and invoice you for those taxes. You agree to pay the tax and fees in addition to your payments. If we pay any taxes, fees or penalties on your behalf, you will pay us on demand the Lease amount we have paid on your behalf plus an administrative fee. You authorize us to sign and record UCC financing statements on your behalf to indicate our interest in the Equipment. You agree to pay us a documentation fee of the greater of either \$125.00 or 0.1% of the total of Equipment invoices, which amount shall be paid together with your first Lease payment, to cover our expense in processing this Lease and filing documents prescribed by the Uniform Commercial Code or other laws associated with the Equipment described above.

**DEFAULT:** If you do not pay your monthly Lease payment or any other amount payable to us within ten (10) days of its due date, or you breach any of the terms or conditions of this Lease, you will be in default of this Lease and any other agreement you may have entered into with us or any of our affiliates. If you default, we may require you to do any combination of the following: (1) immediately pay the present value of the remaining unpaid balance of the Lease plus the residual value of the Equipment, if any, discounted at an annual rate of 5%, as determined by us in our sole discretion; (2) promptly return all of the Equipment or (3) allow us to peaceably repossess the Equipment. In the event that you do not meet these requirements should a default occur, we are permitted to use any and all remedies available to us under the Uniform Commercial Code or any other applicable law. If it is necessary

for us to take possession of the Equipment, you agree to pay the cost of repossession and you agree to pay us our reasonable attorney's fees and costs associated with any legal action we may be required to take in the event of your default. Additionally, if you default, we may retain and apply any security deposits to insure your performance under this Lease. At the termination of this Lease, if you are not in default, any security deposit will be refunded to you without interest.

**ASSIGNMENT: YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS LEASE.** We may sell, assign or transfer this Lease or our rights in the Equipment without notice to you. If we sell, assign or transfer this Lease, the new owner will have the same rights or benefits we have now. You agree that the rights of the new owner will not be subject to any claim, defense or setoff that you may have against us.

**ARTICLE 2A RIGHTS AND REMEDIES:** You agree that this Lease is a finance lease as that term is defined in Article 2A of the Uniform Commercial Code ("UCC"). You hereby agree to waive any and all rights and remedies granted to you by sections 2A-508 through 2A-522 of the UCC.

**CHOICE OF LAW: THIS LEASE WILL BE GOVERNED BY, ENFORCED IN AND INTERPRETED ACCORDING TO THE LAWS OF THE STATE OF DELAWARE. YOU CONSENT TO JURISDICTION IN THE STATE OR FEDERAL COURTS OF DELAWARE. YOU EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY.**

**ABSOLUTE OBLIGATION: YOUR OBLIGATION TO PAY THE LEASE PAYMENTS AND OTHER AMOUNTS AND ALL OTHER OBLIGATIONS HEREUNDER SHALL BE ABSOLUTE AND UNCONDITIONAL AND ARE NOT SUBJECT TO ANY ABATEMENT, SET-OFF, DEFENSE OR COUNTERCLAIM FOR ANY REASON WHATSOEVER.** You agree that the terms and conditions contained in this Lease make up the entire agreement between you and us regarding the lease of the Equipment. Any change in any of the terms and conditions of this Lease must be in writing and signed by us. You agree that any delay or failure to enforce our rights under this Lease does not prevent us from enforcing any such rights at a later time. All of our rights and indemnities will survive the termination of this Lease.

**ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and incorporates all representations made in connection with negotiation of the same. The terms hereof may not be terminated, amended, supplemented or modified orally, but only by an instrument duly authorized by each of the parties hereto.

**FAXED AND COPIED DOCUMENTS:** A facsimile copy of the Lease with facsimile signatures may be treated as an original and will be admissible as evidence of the Lease.

<b>LESSOR SIGNATURE</b>		<b>LEASE GUARANTEE</b>	
Lessee Legal Name X BLUE BIRD Amusement INC		THE UNDERSIGNED GUARANTEES THAT THE LESSEE WILL MAKE ALL PAYMENTS AND ALL OTHER CHARGES REQUIRED UNDER THIS LEASE AGREEMENT WHEN THEY ARE DUE AND WILL PERFORM ALL OTHER OBLIGATIONS UNDER THIS LEASE AGREEMENT. THE UNDERSIGNED ALSO WAIVES ANY NOTIFICATION IF THE LESSEE IS IN DEFAULT, AND CONSENTS TO ANY EXTENSIONS OR MODIFICATIONS GRANTED TO THE LESSEE. IN THE EVENT OF A DEFAULT THE UNDERSIGNED WILL IMMEDIATELY PAY, IN ACCORDANCE WITH ANY DEFAULT PROVISIONS OF THIS LEASE AGREEMENT, ANY AND ALL SUMS DUE UNDER THE TERMS OF THIS LEASE AGREEMENT.	
Authorized Signature X Brian White		SIGNED X Brian White SIGNED X	
Print Authorized Signor Name X Brian White		PRINT NAME Brian White PRINT NAME	
Authorized Signor Title X President	Dated X 2-8-07		
<b>IN WITNESS WHEREOF</b>			
LEAF FUNDING, INC. and Lessee, through their respective officers, have set their hands and seals to this Agreement on the dates indicated below.			
Lessor LEAF Funding, Inc.	By Bryan Hughes		
Accepted On 2/9/07	Date 2/9/07	Title VP	

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**EXHIBIT A TO LEASE  
AGREEMENT  
(EQUIPMENT DESCRIPTION)**

Lease Application No.: 10052074

Lessee: Bluebird Amusement, Inc.; Lessor: LEAF Funding, Inc.

AGTLCKRC32-R	TLC SILVER STRIKE 2007 DLX SER# 1163
ARXSDW	ROW STARBRITE DIGITAL WALL SER# 12506
AGTLCKRC32-R	TLC SILVER STRIKE 2007 DLX SER# 01220711
AGTLCKRC32-R	TLC SILVER STRIKE 2007 DLX W/BILL SER# 0122026
AGITGTL	INCR TECH GOLDEN TEE LIVE GOLF SER# 122026
AG5MMT2008U	MERIT MEGATOUGH 2006 U/D SER# 1311506
AGMFFIUR	MERIT FUSION FORCE ION U/R SER# 02060600920524
AGSM	STERM MONOPOLY P/B SER# 200494
AMEVOS	MERIT EVO STAND SER# 032211
BGV	NAMCO PACMAN 25 <sup>TH</sup> ANNIVERSARY SER# 25ANPGUR0803
ARXHD/ROCK	ROWE/AMI HARD DRIVE-ROCK/PO SER# 109755
ARXHD/FAV	ROWE/AMI AHRD DRIVE-FAVORITE SER# 1110982
APEX5400U52US	APEX 5400 U52 B/A W/STACKER SER# 063770083 & 063870052
AMEVOS	MERIT EVO STAND SER# 032202 & 032209
AGGV18UR	CHERRY MASTER VIDEO GAME SER# 101901 & 101904
CMAE2681D5E	MARS AE-2681-D5E BILL ACCEP SER# 15582106921
AGJ/LRNMCB/CT	JVL RETRO CT N/MODEM/COIN B SER# 200359 & 200363 & 200535
ARXSDW	ROWE STARBRITE DIGITAL WALL SER# 12332
ARXHD/FAV	ROWE/AMI HARD DIRVE-FAVORITE SER# 111704
AGTLCKRC32-R	TLC SLVR STRIKE BOWLERS CLUB SER# 1166 & 1167
AGGV18UR	CHERRY MASTER VIDEO GAME SER# 101902,101903,101905, 101906

LESSEE: Bluebird Amusement, Inc.

LEAF FUNDING, INC.

BY: Brian White  
 PRINT NAME: Brian White  
 TITLE: President  
 DATE: 2-8-07

BY: Sherry Hughes  
 PRINT NAME: Sherry Hughes  
 TITLE: VP  
 DATE: 2.9.07



08CV2008 J. N.  
JUDGE GOTTSCHALL  
MAG. JUDGE KEYS



# DELIVERY AND ACCEPTANCE CERTIFICATE

## LESSEE INFORMATION:

Full Legal Name: Bluebird Amusement, Inc.

DBA Name (if Any): \_\_\_\_\_

Billing Address: 1632 S. Greenwood

Phone: 773-531-3085

City: Park Ridge County: Cook State: IL

Zip Code: 60068

Date of Equipment Delivery: \_\_\_\_\_

On behalf of Lessee, I hereby certify that all of the equipment and other property (collectively, "Equipment") referred to in Lease Agreement No. 10052074 ("Lease") by and between Lessee and LEAF Funding, Inc. ("Lessor") has been delivered to and been received by Lessee at the location(s) set forth in the Lease, that all installation or other work necessary prior to the use thereof has been examined by the Lessee and is in good operating order and condition and is in all respects satisfactory to Lessee, and that the Equipment is accepted by the Lessee for all purposes under the Lease. Lessee represents and warrants that the Date of Equipment Delivery and the Billing Address set forth above and the Equipment Location set forth in the Lease are correct. By its execution and delivery of this Acceptance Certificate, Lessee hereby reaffirms all of the representations, warranties and covenants contained in the Lease as of the date hereof, and further represents and warrants to Lessor that no Event of Default, and no event or condition which with notice or the passage of time or both would constitute an Event of Default, has occurred and is continuing as of the date hereof. Lessee further certifies to Lessor that Lessee has selected the Equipment and has received and approved the purchase order, purchase agreement or supply contract under which the Equipment will be acquired for all purposes of the Lease.

ACCORDINGLY, I AUTHORIZE LESSOR TO PURCHASE THE EQUIPMENT.

DO NOT SIGN THIS DELIVERY AND ACCEPTANCE CERTIFICATE UNTIL YOU HAVE RECEIVED THE EQUIPMENT.

LESSEE SIGNATURE: Bluebird Amusement, Inc.

By: Brian White

Print Name: BRIAN WHITE

Title: President

Date: 2-8-07

For Lessor Use Only

Name of person verifying Delivery & Acceptance of Equipment: Brian White

Signature of Employee who made telephone verification: RA

Date of Telephone Verification: 2/9/07

THE ABOVE SIGNATORY AFFIRMS THAT HE/SHE IS A DULY AUTHORIZED CORPORATE OFFICER OR OFFICIAL, PARTNER OR PROPRIETOR OF THE ABOVE NAMED LESSEE.

EXHIBIT

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